

got £11 or £12 a month ; and of the witnesses who gave evidence on his behalf, Mr. Marks estimated the rent at £10 to £11 a month, and Mr. Costello stated that each of the two flats into which the house was divided could have been let at £5 10s. od. a month. Moreover, at one point in his evidence Mr. Buckhurst appeared to take the view that £10 a month might not be an unfair rent for the property.

It is to be noted, too, that the rent of £8 received by the defendant was already being paid when he bought the property in September, 1940, and it is clear that there must have been an increase in rental value between that date and the 1st January, 1943.

I find, therefore, that the rent obtainable on the 1st January, 1943 was £10 a month, that is, £120 a year. At 13.5 years purchase, this would give a market value of £1,620.

Without having evidence as to the size of the other houses sold at that period, it is difficult to compare this figure with prices realized in other transactions, but it would seem to be reasonably in accordance with the figure of £1,775 paid in October, 1942, for Title No. 3776 containing 3 roods 13 perches in Amy Street, and with the price of £1,350 for the adjoining property, Title 4266, containing 1 rood, sold in September, 1942.

I find, therefore, that the market value on the 1st January, 1943, of the property comprised in Title 6533 was £1,620.

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## HEDSTROM & ORS v. COMMISSIONER OF INLAND REVENUE.

[Civil Jurisdiction (Corrie, C.J.) March 29, 1944.]

*Income Tax Ordinance—Preference shareholder an approved fund exempt from income tax—tax deducted from dividends by Company—whether shareholder can recover a refund from revenue.*

The plaintiffs were trustees of an approved pension fund which was exempt from income tax. In this capacity they held a number of preference shares in two Fiji Companies. The Companies, in accordance with s. 3—(1) of the Income Tax Ordinance, 1921 and the decision in *Greening v. Morris, Hedstrom, Limited & or* [1943] Fiji L.R.—had deducted income tax from the dividends paid to the plaintiffs. The plaintiffs claimed that the tax so paid should be refunded from revenue.

**HELD.**—The tax not having been illegally assessed and collected no refund could be obtained under the Ordinance.

[**EDITORIAL NOTE.**—The following sections of the Income Tax Ordinance, 1921<sup>1</sup> referred to in this judgment have been affected by amendments since the decision :—

- (a) The section authorising deductions by the Company (previously s. 3—(1) (c) ) is now s. 11—(3) of the amended Ordinance (Income Tax (Amendment) Ordinance, 1945, s. 4). S. 11—(3), however, does not make the deduction compulsory as was formerly the case.

<sup>1</sup> *Now Cap. 152.*

- (b) S. 3—(1) (f) and (g) of the Ordinance of 1921 (relating to approved funds) has been amended in certain respects and now appears as s. 3—(1) (c) and (b) respectively of the amended Ordinance (Income Tax (Amendment) Ordinance, 1945 s. 3).
- (c) The list of non-taxable incomes (s. 13 of the Ordinance of 1921) is now at s. 15 of Cap. 152. Revised Edition Vol. II, page 1662.
- (d) The levying and paying of taxes by corporations previously dealt with in s. 11—(3) of the Ordinance of 1921 is now the subject of s. 11—(1) of the amended Ordinance (Income Tax (Amendment) Ordinance, 1945 s. 4).]

Cases referred to :—

*Greening v. Morris, Hedstrom, Limited & or.* [1943] 3 Fiji L.R.

ACTION for a refund of income tax under s. 22 of the Income Tax Ordinance 1921. The facts and arguments appear from the decision.

*R. A. Crompton* for the plaintiffs.

*A. G. Forbes* for the defendant.

CORRIE, C.J.—The plaintiffs are trustees of the Morris Hedstrom Limited Pension Fund, and during the years 1941 and 1942 they held 27,511 6 per cent preference shares of £1 each in Morris Hedstrom Limited and 300 7 per cent preference shares of £10 each in Millers Limited.

Having paid income tax for the years 1941 and 1942, the Companies in question, in reliance upon s. 3 (1) (c) of the Income Tax Ordinance 1921,<sup>1</sup> made certain deductions from the dividends paid to the plaintiffs in respect of the preference shares held by them as such trustees.

The sums deducted were as follows :—

	£	s.	d.	£	s.	d.
1941 Morris Hedstrom Limited	103	3	4			
Millers Limited ... ..	13	2	6			
				116	5	10
1942 Morris Hedstrom Limited	103	3	4			
Millers Limited ... ..	13	2	6			
				£232	11	8

The fund is an approved fund for the purposes of paragraphs (f) and (g) of s. 3 (1)<sup>2</sup> of the Income Tax Ordinance 1921, and is exempted from payment of tax under s. 13 (1) of the same Ordinance as amended by Ordinance 6 of 1941.<sup>3</sup>

The plaintiffs claim a declaration that they are entitled to a refund from the defendant of the amounts deducted from the dividends paid to them.

The plaintiffs' case is that tax was paid by the Companies on behalf of the fund. They point out that, under s. 3 (1) (c), a shareholder whose income is liable either to normal tax or to surtax is relieved from liability to pay at the normal rate on so much of his income as is derived

<sup>1</sup> Vide s. 11—(3) of Cap. 152 as amended by Income Tax (Amendment) Ordinance, 1945.

<sup>2</sup> Vide s. 3—(1) (c) and (b) of Cap. 152 as amended by Income Tax (Amendment) Ordinance, 1945.

<sup>3</sup> Vide s. 15 of Cap. 152. Revised Edition Vol. II page 1662.

from shares in a corporation liable to taxation under s. 11 (3)<sup>1</sup>; and they argue that it follows that in the case of a shareholder who is exempt from taxation, either because his income is below the minimum figure for taxation or because of some express provision (as in the plaintiff's case), the shareholder must be regarded as having been taxed to the extent of the deduction made from his dividends by the corporation; and consequently that he is entitled to a refund under s. 22<sup>2</sup> of the Ordinance.

Such a refund would no doubt be in accordance with the procedure in force under the English Income Tax Acts and Rules, but no provisions for refund in such a case are to be found in the Income Tax Ordinance of this Colony.

As this Court has held in *Greening v. Morris, Hedstrom Limited*, a corporation paying tax under s. 11 (3) is not the agent of its shareholders but is itself the taxpayer. It cannot be said either that the tax paid by the corporation was, in the words of s. 22, illegally assessed and collected, or that the deductions from the plaintiffs, dividends were illegally made; and there is no provision in the Ordinance whereby a shareholder can obtain refund of an amount which has not been collected from him by revenue but has been deducted under s. 3 (1) (c).

The action must therefore be dismissed.

The effect of this judgment, read, with the judgment in *Greening v. Morris Hedstrom Limited*, must be to bear harshly upon persons of small income. To take an obvious example: it would appear to have been the intention of the legislature in framing s. 11 (1) that a widow with an income not exceeding £150 a year should enjoy her income free from taxation whatever might be the source from which such income was derived. In the absence, however, of any provision whereby a taxpayer can recover from revenue a sum deducted under s. 3 (1) (c), if the widow's income is derived from preference shares in a Company, she receives it less a deduction of 25 per cent which she cannot recover.

It can hardly be supposed that such was the intention, and there appears to be a strong case for amending legislation.

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## DEORAJ SINGH *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) August 26, 1944.]

*Liquor Ordinance 1932—s. 64B<sup>1</sup>—supplying liquor for consumption elsewhere than on the premises where it is supplied—liquor supplied on a public road—whether an offence within the section—Summary Jurisdiction Procedure Ordinance, 1876—s. 15<sup>2</sup>—District Commissioner fails to compel attendance of witnesses after application by defence—no affidavit that witness material and unwilling—whether prosecutor has any duty to produce witness for the defence.*

Appellant had supplied liquor to a member of the United States Naval Forces when in uniform. The supplying took place on a public road. At the hearing, when appellant was convicted, counsel for the defence

<sup>1</sup> S. 11—(1) of the amended Ordinance.

<sup>2</sup> Now s. 26 of Cap. 152. Revised Edition Vol. II page 1670.